

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 3:23-cr-00022-MMD-CLB-1

Plaintiff,

ORDER

v.

CORY SPURLOCK,

Defendant.

I. SUMMARY

Defendant Cory Spurlock was indicted for murder-for-hire conspiracy and conspiracy to distribute marijuana. (ECF No. 1.) At his initial appearance, the presiding Magistrate Judge ordered Defendant detained pending trial. (ECF No. 6.) Defendant recently moved to reopen detention and for release based on a claim of violation of his due process rights (ECF No. 133); the Magistrate Judge denied his motion (ECF No. 149). Defendant filed an objection to that order. (ECF No. 155 ("Objection").¹) The Court held a hearing on the Objection. (ECF No. 171.) For the reasons discussed below, the Court overrules Defendant's Objection and affirms the Magistrate Judge's decision.

II. RELEVANT BACKGROUND

On May 11, 2023, the grand jury returned the original indictment charging Defendant with murder-for-hire conspiracy relating to the killing of W.L. (count 1) and conspiracy to distribute marijuana (count 2). (ECF No. 1.) At the initial appearance held on the same day, the government moved for detention, which the Magistrate Judge

¹The government responded (ECF No. 155) and Defendant replied (ECF No. 168).

1 granted.² (ECF No. 6.) Thus, Defendant has been in pretrial detention as part of this case
2 since May 11, 2023.

3 Since then, the case has expanded in scope to include charges related to three
4 deaths. (ECF Nos. 84, 127, 160.) The third superseding indictment, returned on
5 September 12, 2023, charges Defendant with eight counts: (1) conspiracy to possess
6 with intent to distribute and to distribute marijuana between November 2019 and June
7 2020; (2) murder while engaged in narcotics trafficking relating to the killing of J.S.; (3)
8 murder for hire relating to the killing of W.L. between October 2020 and March 2021; (4)
9 tampering with a witness by killing of W.L. on or about November 2020; (5) stalking
10 resulting in death relating to W.L. between October and November 2020; (6) stalking
11 resulting in death relating to the killing of Y.L. between October and November 2020; (7)
12 interference with commerce by robbery in November 2020; and (8) causing death through
13 use of a firearm during and in relation to a crime of violence in November 2020. (ECF No.
14 160.)

15 Because Defendant faced death eligible charges, the case went through the
16 Department of Justice's Capital Case Review Process. (ECF No. 93 at 6.) The
17 government did not submit an expedited no-seek decision for Defendant's death eligible
18 charges.³ (*Id.*) At a January 9, 2024 hearing, after conferring with counsel as to the
19 schedule for completion of the capital case review, the Court set a deadline for the
20 government to make a decision on whether to seek the death penalty by August 16, 2024,
21 and continued trial to November 4, 2024, assuming a no-seek decision. (ECF No. 132 at
22 5-21.)

23 Trial was initially set for July 25, 2023. (ECF No. 6.) The Court has continued trial
24 three times, first to February 6, 2024 (ECF No. 47), then to November 5, 2024 (ECF No.
25 95), and finally to the current trial date of April 22, 2025 (ECF No. 150). Defendant
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27 ²Defendant submitted to the matter of detention. (ECF Nos. 6, 134 at 8.)

28 ³The government asserts that Defendant did not qualify for the expedited process.
(ECF No. 139 at 14.)

1 objected to every continuance, mainly because of his pretrial detention, while his
2 attorneys acknowledged that they need more time to prepare and to effectively represent
3 Defendant. (ECF Nos. 47, 97, 150.)

4 As relevant to Defendant's argument regarding the length of his pretrial detention,
5 Defendant, along with two individuals, Bradley Kohorst and Orit Oged, were charged with
6 the murder of W.L. and Y.L. in a criminal complaint filed in the Mono County Superior
7 Court in April 2021. (ECF No. 93 at 3.) In April 2021, Defendant was taken into custody
8 and remained in state custody until his transfer to federal custody in connection with this
9 case.⁴ (*Id.* at 4.)

10 In the summer of 2022, the U.S. Attorney's Office for this district started to work
11 with Mono County Sherriff's Office, Mono County District Attorney's Office and other
12 federal law enforcement agencies on "an investigation into a multi-state marijuana drug
13 trafficking organization involving several individuals and three related homicides" (the
14 same three deaths ultimately charged in this case). (ECF No. 59 at 2.) One individual,
15 Bradley Kohorst, was charged in this district first via a criminal complaint on August 11,
16 2022 (case no. 3:22-mj-00110-CSD) and later via an indictment on January 19, 2023
17 (case no. 3:23-cr-00002-ART-CLB). (ECF No. 59 at 5.)

18 Before the most recent trial continuance, Defendant moved for release, or in the
19 alternative, to reopen detention. (ECF No. 133.) The Magistrate Judge denied the motion.
20 (ECF No. 149.) This Objection follows.

21 **III. DISCUSSION**

22 The Court reviews the Magistrate Judge's detention order under 18 U.S.C. §
23 3142(e) de novo. *See United States v. Koenig*, 912 F.2d 1190, 1192-93 (9th Cir.1990).
24 This standard requires the district court to review the evidence presented to the
25 magistrate judge, and any additional evidence presented, to "make its own independent
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28 ⁴Defendant represented that he was arrested in connection with the Mono County
case in Montana on March 25, 2021. (ECF No. 142 at 3 n. 3.)

1 determination whether the magistrate's findings are correct, with no deference." *Id.* at
2 1193.

3 Defendant challenges the Magistrate Judge's order on two grounds. First, he
4 asserts he should be released because the long duration of the pretrial detention,
5 including his time in state custody, violates his due process rights. Second, he asserts
6 that changes in circumstances warrant reopening detention under the Bail Reform Act.
7 The Court will address each argument in turn.

8 **A. Due Process**

9 "[P]retrial detention can 'become excessively prolonged and therefore punitive,'
10 resulting in a due process violation." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir.
11 2021) (quoting *United States v. Salerno*, 481 U.S. 739, 747 (1987)). In determining
12 whether pretrial detention violates due process, the Court evaluates three factors; "(1) the
13 length of the defendant's pretrial detention; (2) the prosecution's contribution to the delay;
14 and (3) the evidence supporting detention under the Bail Reform Act." *Torres*, 995 F.3d
15 at 708.

16 As a threshold matter, Defendant argues that the Court should consider his time
17 in state custody as part of the length of his pretrial detention in this case. (ECF No. 133
18 at 14.) At the hearing, defense counsel insisted that the Mono County prosecution was a
19 shell process that the government used to advance federal prosecution, making
20 Defendant's time in state custody relevant to the first *Torres* factor. The government
21 responded that the Mono County state case was comparatively simple: That case
22 addressed a homicide out of Bridgeport, California, while this case involves a wide scale
23 distribution of marijuana and charges relating to killings in different jurisdictions. The
24 government further explained the background of its investigation, starting in May 2022,
25 and described how the investigation paralleled the state's investigation in the Mono
26 County case. The Court agrees with the government that there is no evidence that the
27 government improperly delayed in conducting its own investigation before bringing the
28 indictment in this case while utilizing the state prosecution as a shell. Indeed, the Court

1 would expect the government to conduct its own investigation before seeking the
2 indictment in this case. And as the government explained, counts one and two in this
3 case, which charge Defendant with narcotics trafficking and a killing in connection with
4 the trafficking, involve a different victim and events which occurred before the offenses
5 charged in counts three through eight (which relate to the killings in Bridgeport).
6 Accordingly, the Court finds no basis to consider Defendant's pretrial detention in the
7 Mono County case in evaluating the length of his federal pretrial detention.

8 In this case, Defendant has been detained for about 17 months since his arrest on
9 May 15, 2023 (ECF No. 5), and he will have been detained for almost 24 months by the
10 time of the trial scheduled to begin on April 22, 2025. While Defendant submitted to
11 detention at his initial appearance in this case, he has objected to every continuance of
12 trial primarily because of the length of his pretrial detention, despite his counsel's
13 representations about the need for continuances. The Court thus agrees with Defendant
14 that the first *Torres* factor—the length of his time in pretrial detention in this case—weighs
15 in favor of a finding of a due process violation.

16 As to the second *Torres* factor—the prosecution's contribution to the delay—
17 Defendant argues that the government has contributed to the delay on numerous
18 occasions, including by filing the motion to disqualify counsel, failing to produce discovery
19 until a protective order was entered, refusing to submit an expedited no-seek decision
20 under the Capital Case Review Process, and continually shifting the scope of the case
21 through multiple superseding indictments.⁵ (ECF No. 133 at 17.) While the government
22 explained its reasoning for these decisions⁶, Defendant argues in response that a bad
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24 ⁵Defendant also argues that the government's delay in seeking the indictment in
25 this case while Defendant remained in state custody should be considered. As explained
26 above, the Court cannot find that the government was responsible for the delay in seeking
27 indictment given the government's explanation of the need to conduct its own
28 investigation, the scope of which exceeded the case filed in Mono County.

⁶The government explained that it raised the potential conflict due to Federal Public
Defender ("FPD") staff's contact with Bradley Kohorst, which necessitated an evidentiary
hearing and also delayed discussion of the protective order and discovery until resolution
of that potential conflict. (ECF No. 139 at 12-16.) The government also explained the

1 faith showing is not required because it is sufficient that the government made decisions
2 contributing to the delay (ECF No. 142 at 4.)

3 In considering the second *Torres* factor, the Court “must . . . consider ‘the extent
4 to which the prosecution bears responsibility for the delay that has ensued.’” *Torres*, 995
5 F.3d at 708 (quoting *United States v. Gelfuso*, 838 F.2d 358, 359 (9th Cir. 1988) (holding
6 that the record supported the district court’s finding that the government was not
7 responsible for a delay because it did not deny access to 600 hours of tape, which
8 necessitated continuance of trial, when it restricted access during a short period of time
9 while the tapes were being duplicated)). The *Torres* decision suggests that the
10 government is “responsible” for a delay when it also bears some degree of culpability—
11 not merely, as Defendant insists, when it makes any kind of decision that results in delay.⁷

12 Here, the only delay for which the government bears clear responsibility is the
13 delay in filing a stipulated protective order for a period of about a month.⁸ The
14 government’s separate decision to file a motion to appoint conflict counsel led to a delay
15 of about two months.⁹ But the Court cannot find that the government was responsible for
16 that delay, given that information about FPD contact with Kohorst prompted the
17 government to raise the issue.

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19 extent of the investigation that led to the multiple superseding indictments. (*Id.*) The Court
20 found no conflict in the FPD’s representation of Defendant as a result of that contact with
21 Kohorst, because no confidential information was shared during the brief meeting that
lasted about 35 minutes. (ECF No. 71.) Obviously, had that meeting not occurred, there
would have been no basis for the government to file the motion for appointment of conflict
counsel.

22 ⁷Defendant does not cite to any authority to support his argument that the Court
23 need not find the government acted in bad faith and that the Court may hold the
24 government responsible for making its strategic decisions. The Court need not decide
whether a bad-faith finding is required.

25 ⁸The Court resolved the motion to disqualify on August 7, 2023. (ECF No. 70.) The
26 government represents that a draft protective order was forwarded to defense counsel on
27 September 7, 2023, and defense counsel responded on September 28, 2023, with the
need to make additional edits. (ECF No. 139 at 4.) The parties ultimately filed a joint
motion to approve the stipulated protective order on October 27, 2023. (ECF Nos. 80,
139.) Thus, the period of delay attributable to the government is roughly one month.

28 ⁹The government filed a motion for appointment of conflict counsel on May 30,
2023 (ECF No. 17); the Court denied that motion on August 7, 2023 (ECF No. 70).

1 The two remaining decisions—refusal to submit an expedited no-seek and
2 pursuing multiple superseding indictments—did not result in direct delay. Defendant
3 argues that the former decision resulted in defense counsel spending significant time on
4 mitigation evidence, affecting the work needed for the underlying defense. But the Court
5 cannot hold the government responsible when the case does not qualify for expedited
6 review. As for the multiple superseding indictments, the Court does not find that this case
7 has involved an unusual number of superseding indictments. More important, as the
8 government contends, the charges here involve an expansive alleged conspiracy to
9 distribute marijuana and the killings of three victims in two states. The parties do not
10 dispute that the case is complex and involves extensive electronic discovery and data not
11 easily extracted.¹⁰

12 In sum, the Court finds that other than a delay for several months—comparatively
13 insignificant relative to the total length of pretrial detention—the overall delay here stems
14 primarily from the nature of serious charges involving three killings in two states and the
15 scope of the investigation involving multiple agencies across multiple states. This delay
16 cannot be attributed to the government. The Court finds that the second *Torres* factor
17 weighs against a finding of a due process violation.

18 The third *Torres* factor—the evidence supporting detention under the Bail Reform
19 Act—similarly weighs against a finding of a due process violation. The Court agrees with
20 the Magistrate Judge’s finding that the evidence supports detention under the 18 U.S.C.

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23 ¹⁰In a status report, defense counsel acknowledges that “[t]his is a complex case
24 with voluminous and highly technical discovery requiring forensic analysis.” (ECF No. 93
25 at 11.) The government similarly acknowledged the complexity of the case and has
26 explained the timeline for capital review and the modifications to the charges. (ECF No.
27 132 at 6-8.) At the recent status conference held on August 19, 2024, defense counsel
28 represented they were not prepared to keep the November 5, 2024 trial schedule, citing
the voluminous discovery produced and yet to be produced. (ECF No. 150.) The
government further emphasized the unprecedented amount of discovery, including the
number of electronic devices involved, and the fact that relevant data are not easily
extracted because they are stored on various cloud services. (*Id.*)

1 § 3142(g)¹¹ factors. (ECF No. 149 at 6-7.) At the time of the detention hearing, the
2 Magistrate Judge explained that Defendant's "background information was unknown or
3 unverified, as he did not interview with Pretrial Services," and the grand jury had found
4 probable cause to indict Defendant. Because Defendant submitted on the matter of
5 detention, the Magistrate Judge properly found that Defendant remains a flight risk and
6 poses a danger to the community and there are no conditions that could be fashioned to
7 reasonably assure his appearance. (ECF No. 149 at 7.)

8 Even if the Court considers the information Defendant shared in his recent
9 interview with pretrial services—including his military background, his lack of criminal
10 history and substance abuse history and the support of his family (ECF No. 133 at 18)—
11 the Court agrees with the government that this added information is not enough to shift
12 the analysis under section 3142(g) in favor of release, considering the remaining three
13 factors. As the government points out, the charges have expanded from the initial
14 indictment consisting of two counts involving one death to include six additional counts
15 and allegations of two additional deaths. While the Attorney General has elected not to
16 seek the death penalty, the potential penalties include one mandatory life sentence and
17 five potential life sentences. (ECF No. 139 at 17.) "Consideration of the nature of the
18 offenses charged involves consideration of the penalties." *United States v. Townsend*,
19 897 F.2d 989, 995 (9th Cir. 1990). The length of Defendant's potential sentence increases
20 the risk that he will flee, because the possibility of a lengthy sentence, even without the
21 death penalty, incentivizes fleeing where a shorter potential sentence might not. *See id.*
22 (finding that the district court reasonably determined that defendants' potential lengthy
23 sentence provided them with greater incentive to flee). And the nature of the offenses
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25 ¹¹18 U.S.C. § 3142(g) requires the presiding judge to consider the following factors
26 in determining whether conditions of release will reasonably assure the appearance of
27 the person and the safety of the community: (1) the nature and circumstances of the
28 offense charged, including whether the offense is a crime of violence or involves a
narcotic drug; (2) the weight of the evidence against the person; (3) the history and
characteristics of the person; and (4) the nature and seriousness of the danger to any
person or the community should the person be released.

1 charged, involving the killing of three victims and narcotics trafficking, supports a finding
2 of dangerousness to the community. The Court thus agrees with the government that
3 Defendant presents a risk of nonappearance and poses a danger to the community and
4 that no conditions of release could be fashioned to reasonably assure his appearance or
5 protect the safety of the community.

6 Defendant's pretrial detention of 17 months, expanding to 24 months by the time
7 of trial, "is significant under any metric and is deeply troubling." See *Torres*, 995 F.3d at
8 709 (observing that Torres' pretrial detention for a period of 21 months "is approaching
9 the limits of what due process can tolerate"). But balancing the three *Torres* factors, the
10 Court finds that the government's lack of contribution to the delay and the strength of the
11 evidence supporting pretrial detention weigh against the finding that a due process
12 violation has occurred at this time.

13 **B. Reopening Detention**

14 Defendant argues in the alternative that the Court should reopen detention under
15 18 U.S.C. § 3142(f), citing five changes in circumstances. (1) Defendant's interview with
16 pretrial services; (2) the government's alleged delays; (3) an incident when Defendant
17 was attacked and sustained injury while in pretrial detention; (4) Defendant's "newly
18 discovered history and characteristics"; and (5) the Attorney General's decision to remove
19 the death penalty.¹² (ECF No. 133 at 18.)

20 Section 3142(g) provides that a detention hearing can be reopened "if the judicial
21 officer finds that information exists that was not known to the movant at the time of the
22 hearing and that has a material bearing on the issue whether there are conditions of
23 release that will reasonably assure" the appearance of the person or the safety of the
24 community. Accordingly, the moving party must show that (1) information exists that was
25 not known to the movant; and (2) the new information is material to the release conditions
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27 ¹²Defendant identified the fifth changed circumstance as the anticipated no-seek
28 because the Attorney General had not made the sanction decision at the time the motion
to reopen detention was filed. The Objection to the Magistrate Judge's order relied on the
decision not to seek the death penalty. (ECF No. 155 at 6.)

1 as to the risk of flight or safety to the community. Applying this standard, the Magistrate
2 Judge found that Defendant's cited reasons do not meet these criteria. (ECF No. 149.)
3 The Court agrees.

4 The Magistrate Judge correctly found that facts shared in Defendant's interview
5 with pretrial services (first change) and facts about his background (fourth change) are
6 not new information because they relate to Defendant's own personal information, rather
7 than information previously unknown to the movant as required under the first Section
8 3142(g) factor. The Magistrate Judge also correctly found that Defendant's proffered
9 second and third changes do not meet the second Section 3142(g) factor because they
10 are not material to whether the Court can fashion conditions of release which reasonably
11 assure Defendant's appearance and protect the safety of the community. As for the fifth
12 change—removal of the death penalty—the Magistrate Judge found that it is unclear how
13 the government's decision to remove death as a possible penalty would affect the release
14 conditions. As discussed above, Defendant is still facing a significant potential sentence,
15 including a mandatory life sentence. In light of the significant penalties, the Court cannot
16 conclude that the Attorney General's decision is material to the release conditions.

17 In sum, the Court agrees with the Magistrate Judge and affirms her decision to
18 deny the request to reopen detention.

19 **IV. CONCLUSION**

20 The Court notes that the parties made several arguments and cited to several
21 cases not discussed above. The Court has reviewed these arguments and cases and
22 determines that they do not warrant discussion as they do not affect the outcome of the
23 objection before the Court.

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1 It is therefore ordered that Defendant's Objection to the Magistrate Judge's order
2 (ECF No. 155) is overruled.

3 DATED THIS 8th Day of October 2024.

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6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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